

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-2493

PETITION OF JACQUELINE J. ROUSSEAU

OPINION OF THE BOARD
(Hearing Held: January 23, 2002)
(Effective Date of Opinion: March 18, 2002)

Case No. S-2493 is an application for a special exception pursuant to Section 59-G-2.00 (Accessory Apartment) of the Montgomery County Zoning Ordinance to permit an existing accessory apartment.

The Board of Appeals held a hearing pursuant to Section 59-A-4.11(a) of the Zoning Ordinance. Jacqueline Rousseau testified. Housing Code Inspector Stephen M. Morris of the Department of Housing and Community Affairs also testified. Mr. and Mrs. Dobratz testified in opposition to the application.

Decision of the Board: Special Exception **Granted**, subject
to conditions enumerated below.

EVIDENCE PRESENTED TO THE BOARD

1. Jacqueline Rousseau, a co-owner of the subject property with Irma Rousseau, seeks permission under Section 59-G-2.00 to operate an existing accessory apartment on her property. The subject property is Lot 16, Block 6, Manor Woods Subdivision, located at 4 Dabney Court, Rockville, Maryland, in the R-90 Zone. [Exhibit Nos. 1 and 5].
2. The accessory apartment is located in the basement of the house.
3. Ms. Rousseau lives in the main part of the house, located on the ground level.
4. The lot comprises 8,118 square feet.
5. Ms. Rousseau has owned and lived on the property since 1997.
6. The house was built in 1964.
7. No exterior modifications to the house are proposed.
8. The accessory apartment has the same address as the house and has a separate entrance at the rear of the house [Exhibit Nos. 3, 4 and 7(c)].
9. Three off-street parking spaces are available, one in the carport and two in the driveway [Exhibit Nos. 3 and 10].
10. Maryland National Capital Park and Planning Commission (MNCPPC) staff recommends approval of the special exception with conditions. Staff finds that there are three off-street parking spaces, and space for three cars to park along the front of the property. Staff also finds that there are no other special exceptions in the vicinity.

Finally, staff finds that the gross floor area of the accessory apartment is less than that of the main dwelling [Exhibit No. 10].

11. The accessory apartment contains two bedrooms, a living/dining room, bathroom, kitchen and laundry area. [Exhibit No. 6].
12. Montgomery County Housing Code Inspector Stephen M. Morris conducted an inspection of the subject property on January 16, 2002. A report of his inspection notes that one room in the accessory apartment, which is currently used as a dining room, has access from a sleeping room. He states that if the dining room were to be used for sleeping, access from the other room must be eliminated. Mr. Morris testified that in his opinion there is room for two or three cars to park in the driveway. Mr. Morris stated that based upon its 500 square feet of habitable floor area, the accessory apartment is suitable for two unrelated people or a family of four. [Exhibit No. 11].
13. Ms. Rousseau testified that she understands that she can receive compensation for only one dwelling unit, and that there cannot be access from one sleeping room to another.
14. Mr. and Mrs. Dobratz testified about their concerns about a multi-family use in a single-family neighborhood. They also stated that the walkway to the accessory apartment is close to their property and they feel that this proximity and a security light over the walkway infringe upon their privacy.
15. Ms. Rousseau stated that she is willing to erect a privacy fence between her property and the Dobratz'.

FINDINGS OF THE BOARD

General Standards

Sec. 59-G-1.2. Conditions for granting a special exception.

59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The Board finds no non-inherent adverse effects associated with the proposed accessory apartment. The Board further finds, as discussed below, that its inherent adverse effects will not prevent it from being compatible with the surrounding neighborhood.

59-G-1.21. General Conditions.

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

The Board finds that pursuant to Section 59-C-1.31 of the Zoning Ordinance, an accessory apartment is a permissible special exception in the R-90 Zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The Board finds, as discussed below, that the requested accessory apartment, with conditions, complies with the standards and requirements in Section 59-G-2.00 for accessory apartments.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The Board adopts MNCPPC staff's finding that the governing Aspen Hill Master Plan, while silent about accessory apartments, supports the existing R-90 zone for the subject property in which accessory apartments are allowed by special exception.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

The Board finds that the accessory apartment, suitable for two unrelated persons or a family of four, is consistent with the population density and character of activity in the surrounding R-90 community. No new structures are proposed. The apartment has a separate entrance at the rear of the house, thus preserving the single-family residential appearance of the house. Traffic impact will be similarly minimal. Three off-street parking spaces are available. There are no other special exceptions in the neighborhood.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the impact of the special exception will be minimal, and with the conditions imposed below, that it will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that with the conditions imposed below, the special exception will have none of these adverse effects.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendation of a master or sector plan do not alter the nature of an area.

There are no other special exceptions in the area.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The special exception will not have such adverse effects on residents, visitors or workers in the area.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer public roads, storm drainage and other public facilities.

Adequate public facilities serve the subject property.

Specific Standards

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.

Only one accessory apartment is requested.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:

- (i) The lot is 2 acres or more in size; and
- (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.

The accessory apartment is located in the walkout basement of the home and shares at least one party wall with the main dwelling.

- (3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.

No addition or extension is proposed.

- (4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.

The house was built in 1964.

- (5) The accessory apartment must not be located on a lot:

- (i) That is occupied by a family of unrelated persons; or
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.

None of the enumerated proscribed conditions exist on the subject property.

- (6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.

The apartment has a separate entrance at the rear of the house.

- (7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.

No external modifications to the house are proposed.

- (8) The accessory apartment must have the same street address (house number) as the main dwelling.

The accessory apartment has the same address as the main dwelling.

- (9) The accessory apartment must be subordinate to the main dwelling.

The accessory apartment is located in the basement of the main dwelling and its living area is smaller than that of the main dwelling.

(b) Ownership requirements:

- (1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.

Ms. Rousseau lives in the main dwelling unit.

- (2) Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the applicant, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.

Ms. Rousseau has owned the subject property since 1997.

- (3) Under no circumstances is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.

Ms. Rousseau will not receive compensation for the occupancy of more than one dwelling unit.

- (4) For purposes of this section, "owner" means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the board.

Ms. Rousseau is a co-owner of the property.

- (5) The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.

Not applicable.

(c) Land use requirements:

- (1) The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.

The lot comprises 8,114 square feet.

- (2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in an excessive concentration of similar uses in the general neighborhood of the proposed use (see also Section 59-G-1.21(a)(6) which concerns excessive concentration of special exceptions in general).

There are no other special exceptions in the neighborhood.

- (3) There shall be adequate water supply and sewage disposal systems to serve the occupants of both the accessory apartment and the main dwelling.

Adequate water and sewerage serve the subject property.

- (4) Adequate parking shall be provided. There must be a minimum 2 off-street parking spaces, unless the Board makes either of the following findings:

- (i) More spaces are required to supplement on-street parking: or

- (ii) Adequate on-street parking permits fewer off-street spaces.

Off-street parking spaces may be in a driveway but otherwise shall not be located in the yard between the front of the house and the street right-of-way line.

Three off-street parking spaces are available, one in the carport and two on the driveway. In addition, there is space for three cars to park on the street in front of the house.

- (5) Accessory apartments shall not be detrimental to the use and peaceful enjoyment of surrounding properties or the general neighborhood, and shall cause no objectionable noise, traffic or other adverse impacts.

The Board finds that the accessory apartment, suitable for no more than a family of four, and currently occupied by a single resident will not be detrimental to the use and peaceful enjoyment of surrounding properties or the general neighborhood and will have minimal traffic impact. To buffer the adjoining property (owned by Mr. and Mrs. Dobratz) the Board will require Ms. Rousseau to erect a privacy fence and to direct security lighting for the walkway serving the apartment downward.

Therefore, based upon the foregoing, the Board finds that the special exception can be **granted** subject to the following conditions:

1. Petitioner shall be bound by all of her testimony and exhibits of record to the extent that such testimony and representations are identified in the Board's opinion granting the special exception.
2. Petitioner will erect a privacy fence not taller than 6 1/2 feet on the property line between her lot and lot 15 for a distance equal to the width of her house.
3. Petitioner will direct the security lighting over the walkway to the accessory apartment downward to avoid light spillage onto Lot 15.

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled case.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 18th day of March, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedures.